

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE: § **CASE NO. 14-10447-TMD**
FIRED UP, INC. § **CHAPTER 11**
DEBTOR §

**MOTION OF INDEPENDENT BANK, ITS ASSIGNS AND/OR
SUCCESSORS IN INTEREST, FOR AN ORDER OF ADEQUATE PROTECTION**

TO THE HONORABLE TONY M. DAVIS, UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Independent Bank, Its Assigns and/or Successors in Interest (the “Bank”), by and through the undersigned attorney, and moves the Court as follows:

1. This Motion is brought pursuant to 11 U.S.C. § 362(d) in accordance with Rule 4001 of the Bankruptcy Rules.

2. On or about March 27, 2014, Fired Up, Inc., d/b/a Kona Restaurant Group, Inc. (“Debtor”), filed a petition for an order for relief under Chapter 11 of the Bankruptcy Code, Title 11 U.S.C.

3. At the time of filing the Chapter 11 petition, the Bank held a Promissory Note executed on December 10, 2008, in the original principal amount of EIGHT HUNDRED TWELVE THOUSAND DOLLARS (\$812,000.00) with interest thereon at the rate of 6.50% per annum (the “Note”). A true and correct copy of the Note is attached hereto as Exhibit “A” and is incorporated by reference herein.

4. Thereafter, on December 5, 2011, the Debtor executed a Modification and Extension of the Note extending the term of the Note to December 5, 2016 (the “Modification”). A true and correct copy of the Memorandum of Modification and Extension is attached hereto as Exhibit “B” and is incorporated by reference herein.

5. With respect to the Note and Modification, the indebtedness is secured by a Deed of Trust dated December 10, 2008, and executed by Debtor on real estate with all improvements locally known as 3050 Silverlake Village Drive, Pearland, Texas 72584 (the “Deed of Trust”). A true and correct copy of the Deed of Trust is attached hereto as Exhibit “C” and is incorporated by reference herein.

6. The indebtedness is additionally secured by a UCC-1 Financing Statement properly recorded with the Secretary of State on February 11, 2009, on all of the Debtor's interest in the following personal property and all proceeds of such property:

"All machinery, equipment, furniture, fixtures, decorations, tools signs, small wares and all other items of tangible personal property, and all parts, accessories, attachments, additions, accessions or replacements thereto or proceeds therefrom, including without limit, rights to payment and return premiums and insurance proceeds under insurance policies with respect to any of the foregoing now or in the future installed in, affixed to or used in the operation or ownership of debtor's facilities located at 1301 North Loop West, San Antonio, Bexar County, Texas Improved by Carino's Grill Restaurant and 3050 Silverlake Village Drive Pearland, Brazoria County, Texas Improved by Carino's Italian Grill Restaurant."

A true and correct copy of the UCC-1 Financing Agreement is attached hereto as Exhibit "D" and is incorporated by reference herein.

7. Prior to the filing of the petition, the Debtor was indebted to the Bank according to the terms and conditions of the Note, the Modification, Deed of Trust, and UCC-1 Financing Statement. As of May 16, 2014, the total outstanding debt is \$596,651.83. According to the schedules filed by the Debtor, the fair market value of the real property securing the Note is \$650,000.00.

8. Further cause may exist to terminate the automatic stay if the Debtor fails to provide proof of adequate insurance as required by the Note, Modification, and Deed of Trust. The Bank hereby demands proof of insurance covering the real property and the contents therein by the Debtor.

9. In accordance with the terms of the Note, Deed of Trust, and UCC-1 Financing Statement, the Bank would allege that it is entitled to reasonable post-petition attorney's fees, including, but not limited to fees, if any, for the preparation and filing of a proof of claim and fees and costs for the filing of this Motion and protecting the Bank's interest throughout the Chapter 11 confirmation process.

10. By reason of the foregoing, the Bank requests that the Court require the Debtor to provide monthly adequate protection payments in the amount of \$6,563.00 or to terminate the stay so the Bank may proceed to foreclose in accordance the Note, Deed of Trust, and UCC-1 Financing Statement.

11. The Bank reserves the right to assert an 11 U.S.C. § 362(d)(2) cause of action, if appropriate, at the hearing on the Bank's *Motion for Adequate Protection*.

WHEREFORE, the Bank prays that this Court enter an order requiring the Debtor to provide adequate protection by making monthly payments of \$6,563.00 beginning June 5, 2014; that the Bank be awarded its reasonable post-petition attorney's fees and expenses for this Motion; and that the Bank be granted such other and further relief to which it may show itself to be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of May, 2014, a true and correct copy of the foregoing document was served via electronic means as listed on the Court's ECF noticing system or by regular First Class Mail, postage prepaid, to the following parties:

/s/ Steve Turner
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